

Case No. 24-3445

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Drake University
Plaintiff - Appellee

v.

Des Moines Area Community College Foundation; Des Moines Area
Community College
Defendants - Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

Case No. 4:24-CV-00227
The Honorable Stephanie M. Rose

**UNRESISTED MOTION TO CONSOLIDATE APPEALS, ALIGN
BRIEFING SCHEDULES, AND EXTEND THE DEADLINE FOR
APPELLANTS' BRIEF AND APPENDIX**

R. Scott Johnson (#AT0004007)
Cara S. Donels (#AT0014198)
Erin M. Boggess (#AT0015950)
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309-1977
Telephone: (515) 242-8900
RSJohnson@fredlaw.com
CDonels@fredlaw.com
EBoggess@fredlaw.com

Laura L. Myers (Minn. #0387116)
FREDRIKSON & BYRON, P.A.
60 South 6th Street, Suite 1500
Minneapolis, MN 55402-4400
Telephone: (612) 492-7000
LMyers@fredlaw.com

Dated: January 15, 2025

Attorneys for Defendants - Appellants

COMES NOW, Defendants - Appellants Des Moines Area Community College Foundation and Des Moines Area Community College (“Appellants”) for their Unresisted Motion to Consolidate Appeals, Align Briefing Schedules and Extend the Deadline for Appellants Brief and Appendix pursuant to Fed. R. App. P. 3(b)(2), state as follows:

1. On November 22, 2024, the District Court, the Honorable Stephanie M. Rose, entered an order granting Drake University’s Motion for a Preliminary Injunction.

2. Appellants timely appealed the District Court’s decision in this appeal, which is docketed as Appeal No. 24-3445.

3. On December 5, 2024, Appellants filed an expedited Motion to Extend Deadline to Comply with Preliminary Injunction Order and Clarify Scope of Preliminary Injunction in the District Court.

4. On December 10, 2024, the District Court entered an order on Appellants Motion to Extend and Clarify, which clarified the scope of the previously-entered preliminary injunction.

5. On January 9, 2025, Appellee filed a timely Notice of Interlocutory Appeal of the clarification order entered on December 10, 2024, which is docketed as Appeal No. 25-1053.

6. Appellants request that the Court consolidate this appeal with the appeal filed by Drake on January 9, 2025. The two appeals challenge the same order entered on November 22, 2024, which was clarified on December 10, 2024.

7. Consolidation is appropriate because the two appeals involve the same preliminary injunction order, the same parties, and the same counsel for the parties. Accordingly, consolidation will promote efficiency and consistent treatment. *See* 16A Wright & Miller, Federal Practice & Procedure § 3949.2 (5th ed.) (“A court of appeals may choose to consolidate appeals for the sake of efficiency and to promote consistent treatment.”); *Chapman v. Lab One*, 390 F.3d 620, (8th Cir. 2004) (consolidating appeals where the two cases presented closely related issues).

8. For the sake of administrative efficiency, Appellants also request that the Court align the briefing schedules for both appeals. *See*

16A Wright & Miller, *supra*, at § 3949.2 (noting that consolidated appeals “generally follow a single briefing schedule”).

9. Because the two appeals are appealing the same preliminary injunction order entered on November 22, 2024, as clarified on December 10, 2024, Appellants respectfully request that the two appeals be treated as cross appeals pursuant to Fed. R. App. Pro. 28.1.

10. The current deadline for the Appellants initial brief and appendix in this appeal is January 23, 2025.

11. Due to the consolidation of the two appeals into a cross appeal, Appellants respectfully request that its deadline be extended to February 3, 2025.

12. Counsel for the Appellants has conferred with counsel for Appellee, and they do not resist any of the relief sought in this motion.

WHEREFORE, the Appellants request that the Court:

- a. Consolidate this appeal with Plaintiff-Appellee’s Appeal No. 25-1053;
- b. Align the briefing to comply with Fed. R. App. Pro. 28.1 for cross appeals; and

- c. Extend the deadline for Appellants' principal brief and appendix to February 3, 2025.

Date: January 15, 2025

s/R. Scott Johnson

R. Scott Johnson (#AT0004007)
Cara S. Donels (#AT0014198)
Erin M. Boggess (#AT0015950)
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309-1977
Telephone: (515) 242-8900
E-mail: RSJohnson@fredlaw.com
CDonels@fredlaw.com
EBoggess@fredlaw.com

Laura L. Myers (Minn. #0387116)
FREDRIKSON & BYRON, P.A.
60 South 6th Street, Suite 1500
Minneapolis, MN 55402-4400
Telephone: (612) 492-7000
E-mail: LMyers@fredlaw.com

Attorneys for Defendants - Appellants

CERTIFICATE OF COMPLIANCE

The undersigned counsel of record hereby certifies that this Unresisted Motion to Consolidate Appeals, Align Briefing Schedules and Extend the Deadline for Appellants Brief and Appendix complies with Eighth Circuit Local Rule 28A(h), as it has been scanned and is virus-free.

Date: January 15, 2025

s/R. Scott Johnson

R. Scott Johnson (#AT0004007)
Cara S. Donels (#AT0014198)
Erin M. Boggess (#AT0015950)
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309-1977
Telephone: (515) 242-8900
E-mail: RSJohnson@fredlaw.com
CDonels@fredlaw.com
EBoggess@fredlaw.com

Laura L. Myers (Minn. #0387116)
FREDRIKSON & BYRON, P.A.
60 South 6th Street, Suite 1500
Minneapolis, MN 55402-4400
Telephone: (612) 492-7000
E-mail: LMyers@fredlaw.com

Attorneys for Defendants - Appellants

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2025, I electronically filed the foregoing Unresisted Motion to Consolidate Appeals, Align Briefing Schedules and Extend the Deadline for Appellants Brief and Appendix with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ R. Scott Johnson